

October 8, 2010

Response to MAFAC inquiry re: public involvement and restoration criteria

NRDA Restoration Project Selection Criteria and Public Engagement

Objective: *NOAA should, consistent with the Natural Resource Damage Assessment process, schedule a public process to assist with development of specific criteria to select restoration projects related to the BP Gulf Oil spill.*

Introduction

In response to an inquiry regarding the Natural Resource Damage Assessment (NRDA) process and the coordinated public process that aids in the selection criteria for restoration projects, the following document attempts to provide the appropriate background and explanation. Specifically, this document will outline the restoration project selection criteria required under the Oil Pollution Act (OPA) and decision-making factors expected of the trustees¹, along with an overview of the public engagement process for NRDA and specifically, the BP Gulf Oil Spill.

Restoration Project Selection Criteria

The OPA regulations contain restoration project selection criteria that must be followed by the trustees. Trustees must identify a reasonable range of restoration alternatives, evaluate, and select the preferred alternative(s), and develop a Draft and Final Restoration Plan. Acceptable restoration actions include any of the actions authorized under OPA² or some combination of those actions. Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under the regulations.

Once restoration alternatives are identified, the restoration alternatives are evaluated based on a number of factors that include:

- the cost to carry out the alternative;
- the extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- the likelihood of success of each alternative;
- the extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative; and
- the extent to which each alternative benefits more than one natural resource and/or service; and effect of each alternative on public health and safety.

¹ Trustees (or natural resource trustees) are those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

² Restoration, rehabilitation, replacement, or acquisition of the equivalent.

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If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative. If additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects.

The trustees can develop and apply additional factors, as needed based on the circumstances of the spill, if developed under the consensus based decision-making process of the Trustee Council. Legitimate decision-making factors that could be considered in the restoration planning process may include factors such as: technical; economic; environmental; project objectives and performance criteria; scheduling constraints and opportunities; budgeting constraints and opportunities; administrative concerns, policy and traditions; or the needs of the affected or interested public.

NRDA Public Engagement Process

In order to understand the BP Gulf Oil Spill plan for public engagement, it is important to understand what is required in that regard for all OPA NRDA cases. OPA and NEPA require that appropriate restoration be identified in a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan. More specifically, the nature of public review and comment on the restoration plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements. Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans and the issuance of any notices to that effect.

NRDA Public Engagement Process and Restoration Selection Criteria for BP Gulf Oil Spill

The BP Gulf Oil Spill restoration selection criteria and public engagement process will follow the NRDA and OPA regulations, as described above. An NOI to conduct restoration planning for the BP Gulf Oil Spill was published on October 1, 2010, in the Federal Register. Along with this notice, a press release and a video describing the process was also made available to the public. The Trustees will soon invite the public to participate in restoration planning for this spill in accordance with 15 C.F.R. § 990.14(d) and related state laws. To-date, state agencies have expressed a desire to co-lead public meetings in each of the affected states. The first public meetings will be focused on informing the public on the NRDA process, and are scheduled for October or early November. After these informative public meetings are held, the process of developing a PEIS (Programmatic Environmental Impact Statement) and restoration scoping will begin.³ Additional public meetings are being planned for later this year, and it is expected that the trustees will continue to provide substantial opportunities for public involvement during the restoration planning process. The opportunities for public involvement will be addressed in future notices and announcements and the public, and MAFAC will be informed of each of these opportunities.

³ A PEIS will be prepared for this case, due to the geographic scope of the incident and the breadth of resources affected. In a PEIS, categories of appropriate restoration types are identified for application to the impacted resources, rather than specific projects.